3346.

SUPREME COURT OF THE UNITED STATES.

No. 107.

WILLIAM C. PEASE, PLAINTIFF IN ERROR,

vs.

JOHN PECK, SURVIVOR, &c.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MICHIGAN.

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GIDEON, print.

SUPREME COURT OF THE UNITED STATES.

WILLIAM C. PEASE
vs.
JOHN PECK, survivor of himself and WILLIAM B. WALTON, deceased. } In Error.—(Copy.)

Know all men by these presents, that we, Holmes H. Emmons and William Gray, both of Detroit, in the State of Michigan, are held and firmly bound unto the above-named John Peck, survivor, &c., in the sum of two hundred and fifty dollars, to be paid to the said John Peck, survivor, &c., his executors or administrators: To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents; sealed with our seals, and dated at Detroit, this twenty-ninth day of August, A. D. 1855.

Whereas the above-named William C. Pease hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the seventh circuit and district of Michigan:

Now, therefore, the condition of this obligation is such, that if the said William C. Pease shall prosecute his said writ of error to effect, and if he shall answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

(Signed) H. H. EMMONS, [L. S.]
WM. GRAY, [L. S.]

In presence—

I approve of the foregoing bond, and the parties thereto.

(Signed) ROSS WILKINS,
U. S. District Judge.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the Circuit Court of the United States for the seventh circuit and district of Michigan, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you, between John Peck, survivor of himself and William B. Walton, deceased, and William C. Pease, a manifest error hath happened, to the great damage of the said William C. Pease, as by his complaint appears: And it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties afore-

said in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-ninth day of August, A. D. eighteen hundred and fifty-five, and of the independence of the United States the eightieth.

[L. S.]

JNO. WINDER, *Clerk.*

The execution of the within writ appears by the return hereto annexed.

JNO. WINDER, *Clerk.*

Pleas before the judges of the Circuit Court of the United States for the seventh circuit and district of Michigan, at the district court-room, in the city of Detroit, of the term of June, in the year of our Lord one thousand eight hundred and fifty-three.

In the case between—

JOHN PECK, survivor of himself and WILLIAM B. WALTON, deceased, plaintiff,
and
WILLIAM C. PEASE, defendant.

DISTRICT OF MICHIGAN, *to wit:*

Be it remembered, that on the twenty-second day of March, in the year of our Lord one thousand eight hundred and fifty-two, the said John Peck, survivor of himself and William B. Walton, deceased, plaintiff, by O. Hawkins, his attorney, came into the court aforesaid, before the judges thereof, in pursuance of the statute and the rules and practice of said court, and filed a declaration against the said defendant, William C. Pease, which said declaration is in the words and figures following, to wit:

Declaration.

THE CIRCUIT COURT OF THE UNITED STATES,
For the Seventh Circuit and District of Michigan.

Of the twenty-second day of March, A. D. eighteen hundred and fifty-two.

DISTRICT OF MICHIGAN, *ss:*

John Peck, survivor of himself and William B. Walton, deceased, plaintiff in this suit, and who is a citizen of the State of New York, by

O. Hawkins, his attorney, complains, according to the form authorized by the law and rules of this court for commencing suits, by filing a declaration, serving a copy thereof, and notice of rule to plead, of William C. Pease, who is a citizen of the State of Michigan, defendant, in a plea that he render to the said John Peck, survivor of himself and William B. Walton, since deceased, the sum of three thousand three hundred and thirty-nine dollars and forty-six cents, lawful money of the United States of America, which he owes to and unjustly detains from him, the said John Peck, as survivor of himself and William B. Walton, deceased.

In that, whereas, the said John Peck and William B. Walton, since deceased, at the January term of the circuit court of the Territory of Michigan, (now State of Michigan,) for the county of Washtenaw, begun and held before the judges thereof, at Ann Arbor, in said county, to wit, on the eighth day of March, A. D. eighteen hundred and thirty-six, being as yet of said January term of said court for the year eighteen hundred and thirty-six, by the consideration and judgment of the said circuit court, recovered against the said defendant the sum of eight hundred and nineteen dollars and thirty-one cents, being a portion of the sum above demanded, which in and by the said court was then and there adjudged to the said John Peck and William B. Walton, in the lifetime of the said William B. Walton, since deceased, for their damages, which the said Peck & Walton, in the lifetime of said Walton, but who has since deceased, had sustained, as well by the reason of the non-performance by the said defendant of certain promises and undertakings then lately made to the said Peck & Walton, in the lifetime of said Walton, the said Walton having since deceased; as for the costs and charges by the said John Peck and William B. Walton, in the lifetime of said Walton, but who has since deceased, by them about the suit of the said John Peck and the said William B. Walton, in the lifetime of said Walton, but who has since deceased, in that behalf expended, whereof the said defendant was convicted, as by the record and proceedings thereof, remaining in the said circuit court, more fully appear; which said judgment still remains in full force and effect, nor reversed, satisfied, or otherwise vacated. And the said John Peck and William B. Walton, in the lifetime of said Walton, have not, nor has the said John Peck, as survivor of himself and William B. Walton, deceased, since the decease of the said William B. Walton, obtained any execution or satisfaction of or upon the said judgment so recovered as aforesaid, whereby an action hath accrued to the said John Peck, as survivor of himself and William B. Walton, deceased, to demand and have of and from the said defendant the sum of one thousand seven hundred and thirty-nine dollars and eighty-one cents, being a part of the said sum above demanded.

And the said John Peck, survivor of himself and William B. Walton, since deceased, further complains against the said defendant, for that, whereas the said defendant heretofore, to wit, at the city of New York, on the third day of May, in the year of our Lord one thousand

eight hundred and thirty-three, made his certain promissory note in writing, bearing date a certain day and year therein named and mentioned, to wit, on the day and year aforesaid, and then and there delivered the said note to John Peck, William B. Walton, Gerardus Q. Carley, under the name and style of Peck, Walton and Carley, who, at the date of said notes, were all citizens of the State of New York, and there living; since which time the said William B. Walton has deceased; by which said note the said defendant then and there promised to pay, four months after the date thereof, to the said John Peck, William B. Walton and Gerardus Q. Carley, in the lifetime of said Walton, since deceased, under the name and style of Peck, Walton and Carley, or to their order, the sum of six hundred and ninety-six $\frac{9}{100}$ dollars, meaning thereby the sum of six hundred and ninety-six dollars and nine cents, for value received. And the said John Peck, William B. Walton and Gerardus Q. Carley, in the lifetime of said Walton, since deceased, under the name and style of said Peck, Walton and Carley, being the persons to whom or to whose order the payment of the said sum of money therein specified was to be made, after the making of the said promissory note, and before the payment of the sum of money therein specified was to be made, to wit, on the third day of May aforesaid, at the city of New York aforesaid, endorsed the said promissory note; by which said endorsement, the said Peck, Walton and Carley, in the lifetime of said Walton, since deceased, then and there ordered and appointed the said sum of money in the said promissory note specified, to be paid to the said John Peck and William B. Walton, since deceased, and then and there delivered the said note, so endorsed as aforesaid, to said Peck and Walton, in the lifetime of said Walton; by means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said Peck and Walton, in the lifetime of the said Walton; by means whereof and by force of the statute in such case made and provided, the said defendant became liable to pay to the said Peck and Walton, in the lifetime of the said Walton, and to the said John Peck, as survivor of himself and William B. Walton, deceased, since the decease of said Walton, the sum of money in the said promissory note specified, according to the tenor and effect of said promissory note. And, although the said sum of money, in the said promissory note specified, hath been long since due and payable, according to the tenor and effect of the promissory note, yet the said John Peck saith, that the said defendant (although often requested so to do) did not nor would pay the said sum of six hundred and ninety-six dollars and nine cents, in the said note specified, or any part thereof, to the said John Peck and William B. Walton, in the lifetime of said Walton, nor to the said John Peck, since the decease of said William B. Walton, but hath hitherto wholly refused so to do; whereby an action hath accrued to the said John Peck, as survivor of himself and William B. Walton, deceased, to demand and have of and from the said defendant the sum of fifteen hundred and ninety-nine dollars and sixty-five cents, being the amount

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now due on said promissory note, and part of the sum of three thousand three hundred and thirty-nine dollars and forty-six cents, first demanded in this declaration.

Yet the said defendant (although often requested so to do) hath not, as yet, paid the said sum of three thousand three hundred and thirty-nine dollars and forty-six cents, above demanded, or any part thereof, to the said John Peck and William B. Walton, in the lifetime of said Walton, nor to the said John Peck since the decease of the said William B. Walton; but he to do this hath hitherto wholly refused, and still doth refuse, to the damage of said John Peck, as survivor of himself and William B. Walton, deceased, of four thousand dollars, and therefore he brings suit.

"O. HAWKINS, *Att'y for Plaintiff.*"

Pleas.

And the said William C. Pease, defendant, by Willcox, Shelden and Gray, his attorneys, as to the first count of the said declaration, says:

That there is not any record of the said supposed recovery in the said first count of said declaration mentioned, remaining in said circuit court of the Territory of Michigan, (now State of Michigan) for the county of Washtenaw, in manner and form as the said plaintiff has in said first count alleged, and this the said defendant is ready to verify; wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against the defendant, &c.

And for a further plea in this behalf to the said first count, the said defendant says, that at a session of the circuit court for the county of Washtenaw, State of Michigan, which said court had jurisdiction of the subject-matter, held at Ann Arbor, in said county, on the thirteenth day of July, A. D. eighteen hundred and forty-four, the said plaintiffs, named in said pretended judgment, caused an order to be entered that an execution be issued upon said pretended judgment; and in pursuance of said order, then and there caused said execution to be issued out of said court. And further, that at a subsequent session of the said court, held at the same place, on the twenty-eighth day of March, A. D. eighteen hundred and forty-five, the said defendant moved the said court that the said order be vacated and the said execution set aside, for the reason, that the said pretended judgment upon which the same issued was, in law, satisfied and discharged; and that the said court, having heard the arguments of counsel, as well for said plaintiffs as said defendant, then and there held, decided and adjudged, that the said pretended judgment was in law satisfied and discharged, and thereupon ordered that the said order be vacated, and the execution issued in virtue thereof set aside: as by the records and proceedings thereof, remaining in the said court, more fully appears.

And the said defendant avers that the said pretended judgment, upon which said execution issued, and upon which said proceedings, decision, and adjudication were had in said court, is the same identical judgment mentioned in the said first count of the plaintiff's declaration.

And further, said defendant saith that the parties in this suit, and in the said proceedings had in the said circuit court, are the same, and that the decision and adjudication of said circuit court, declaring the said judgment discharged and satisfied in law, has never been reversed or vacated, but remains in full force and effect, all of which the said defendant is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against this defendant, &c.

And for a further plea to the said first count in said declaration, the said defendant says, that the said plaintiff ought not to have or maintain their aforesaid action thereof against him, because he says that the said recovery of said judgment in said count mentioned, against said defendant, did not take place within eight years next preceding the commencement of this suit, and this he is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

And as to the said second count oft he said declaration, the said defendant says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that he did not at any time within six years before the filing of the declaration in this cause undertake and promise, in manner and form as the said plaintiff hath thereof complained against him, and this the said defendant is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And for a further plea in this behalf, to the said second count in this declaration, the defendant says, that heretofore, to wit, in the January term of the year 1836, of the circuit court for the Territory of Michigan, for the county of Washtenaw, the said plaintiff, and the said Walton, named in said declaration, impleaded the said defendant in a plea of trespass on the case upon the premises, &c., for the same identical note and cause of action in said second count mentioned, and such proceedings were thereupon had in said court upon said plea, that afterwards, to wit, in the same term, the said plaintiffs, by the consideration and judgment of the said court, recovered in the said plea against the said defendant, and upon the same identical cause of action mentioned in the said second count, a judgment for eight hundred and eleven dollars damages; and also eight dollars and thirty-one cents, for their costs and charges by them in said suit expended, as by the records and proceedings thereof, still remaining in the said court, more fully and at large appears. Wherefore the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

WILLCOX, SHELDON & GRAY,
Att'ys for def't.

Replication and Motion.

And the said plaintiff, as to the plea of the said defendant by him first above pleaded, saith, that the said plaintiff, by reason of any thing

by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that there is such record of the said recovery remaining in the said circuit of the Territory, now State of Michigan, as the said plaintiff hath above in his declaration in that behalf alleged; and this the said plaintiff is ready to verify by the record, when, where, and in such manner as the court now here shall direct and award; and he prays that the said record may be seen and inspected by this court here. And because the said plaintiff hath not the said record now ready here in court, he is commanded to have the same here on Monday, the twenty-first day of June, eighteen hundred and fifty-two, before the judges of the circuit court of the United States for the seventh circuit and district of Michigan, at the court-room in the city of Detroit, and that he fail not at his peril; and the same day is given to the said defendant at the same place.

O. HAWKINS, *Att'y for pl'ff.*

The above replication is filed de bene esse, pending the motion made to strike out the fifth plea for reasons stated.

And the said plaintiff, as to the plea of the said defendant by him thirdly above pleaded, saith, that the said plaintiff ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says that at the time when the said cause of action, in the said first count of the said plaintiff's declaration mentioned, did accrue to the said plaintiff, as survivor of himself and William B. Walton, deceased, he, the said plaintiff, as well as the said William B. Walton, since deceased, was in parts beyond the seas, to wit, at the city, county, and State of New York, and that the said plaintiff, nor the said William B. Walton, since deceased, did not at any time from the time the said cause of action accrued, until within eight years of the day of the commencement of this suit, come into or come within the State of Michigan, and this the said plaintiff is ready to verify. Wherefore he prays judgment and his debt aforesaid, together with damages by him sustained on occasion of the detention thereof, to be adjudged to him, &c.

O. HAWKINS, *Att'y for pl'ff.*

And the said plaintiff, as to the plea of the said defendant by him fourthly above pleaded, saith, that the said plaintiff ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that at the time when the said cause of action, in the said second count of the said plaintiff's declaration mentioned, did accrue to the said plaintiff, as survivor of himself and William B. Walton, deceased, he, the said plaintiff, as well as the said William B. Walton, since deceased, was in parts beyond the seas, to wit, at the city, county, and State of New York; and that the said plaintiff, nor the said William B. Walton, since deceased, did not, at any time, from the time the said cause of action accrued, until within six

years of the day of the commencement of this suit, come into, or come within the State of Michigan, and this the said plaintiff is ready to verify. Wherefore he prays judgment and his debt aforesaid, together with damages by him sustained on occasion of the detention thereof, to be adjudged to him, &c.

O. HAWKINS,
Att'y for pl'ff.

And the said plaintiff, as to the plea of the said defendant by him secondly above pleaded, saith the said plaintiff ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that there is no record of any decision, or of any judgment rendered, or decision made in said cause of John Peck and William B. Walton vs. William C. Pease, in the circuit court for the county of Washtenaw, on the twenty-eighth day of March, A. D. eighteen hundred and forty-five, or at any other time before or since said day; that the said circuit court decided and adjudged that the said judgment set forth and declared upon in the first count of the plaintiff's declaration in this cause mentioned, was in law satisfied and discharged, as in said plea alleged, or in any other manner; neither did said circuit court so decide on the said twenty-eighth day of March, A. D. eighteen hundred and forty-five, or at any other time; and this the said plaintiff, as survivor of himself and William B. Walton, deceased, prays may be inquired of by the country, &c.

O. HAWKINS,
Att'y for pl'ff.

JOHN PECK, survivor of himself and WILLIAM B. WALTON, deceased,
vs.
WILLIAM C. PEASE.

And the said plaintiff moves the court to strike out all of the fifth plea pleaded by said defendant, for the reason that said plea is totally repugnant to, and inconsistent with, the first of said defendant's, and for other reasons apparent on the face of the plea; which motion will be brought up for argument on the first Monday of June next, at the court-room of the circuit court of the United States, at the city of Detroit.

O. HAWKINS,
Ann Arbor, May 14, 1852. *Att'y for pl'ff.*

Demurrer and Rejoinder.

And the said defendant, as to the replication of the said plaintiff to the third plea of the defendant above pleaded, says, that the said replication of the said plaintiff, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid

action thereof against the said defendant, and that the said defendant is not bound by law to answer the same, and this the said defendant is ready to verify. Wherefore, by reason of the insufficiency of the said replication in this behalf, the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And the said defendant, according to the rules and practice of this court, states and shows to the court here the following causes of demurrer in law to the said replication, that is to say:

1st. The said plaintiff and William B. Walton, deceased, being in the city, county, and State of New York, at the time the said alleged cause of action accrued, did not take it out of the operation of the statute of limitations.

2d. Said replication is not, in law, a sufficient answer to said plea, inasmuch as it does not allege that said plaintiff, or said Walton, from the time said pretended cause of action accrued, and until within eight years before the commencement of this suit, were without the United States, nor any other facts that would bring it within any of the exceptions to the statute of limitations in such case made and provided, or that in law constitute a sufficient answer to the said plea of the said defendant.

3d. The said replication is, in other respects, uncertain, informal, and insufficient.

And as to the replication of the said plaintiff to the fourth plea of the said defendant, above pleaded, he says, that the said replication of the said plaintiff, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that the said defendant is not bound by law to answer the same, and this the said defendant is ready to verify. Wherefore, by reason of the insufficiency of the said replication in this behalf, the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And the said defendant, according to the rules and practice of this court, shows to the court here the following causes of demurrer in law to the said replication, that is to say:

1st. The said plaintiff and William B. Walton being in the city, county, and State of New York at the time said cause of action accrued, did not take it out of the operation of the statute of limitations.

2d. Said replication is not in law a sufficient answer to said plea, inasmuch as it does not allege that said plaintiff or said Walton, from the time said pretended cause of action accrued, and until within eight years before the commencement of this suit, was without the United States, nor any other facts that would bring it within any of the exceptions to the statute of limitations in such case made and provided, or that in law constitute a sufficient answer to the said plea of the said defendant.

3d. The said replication is in other respects uncertain, informal, and insufficient.

And as to the replication of the said plaintiff to the second plea of the defendant above pleaded, and whereof he hath put himself upon the country, the said defendant doth the like, &c.

WILLCOX, SHELDON & GRAY,
Att'ys for defendant.

JOHN PECK, survivor of himself and WILLIAM B. WALTON, deceased,
vs.
WILLIAM C. PEASE.

Amended replication to Defendant's third and fourth Pleas.

DISTRICT OF MICHIGAN.

And the said plaintiff, as survivor of himself and William B. Walton, deceased, as to the plea of the said defendant by him fourthly above pleaded, saith that the said plaintiff, as survivor of himself and William B. Walton, deceased, ought not to be barred from having or maintaining his aforesaid action thereof against the said defendant, because he saith that at the time when the said cause of action in the said first count of the said plaintiff's declaration mentioned did accrue to the said plaintiff and the said William B. Walton, in the lifetime of the said William B. Walton, since deceased, and the said plaintiff since the death of the said William B. Walton, were in parts beyond the jurisdiction and out of the then Territory, now State of Michigan, to wit, in the city, county, and State of New York; and that the said plaintiff and the said William B. Walton, or either of them, in the lifetime of the said Walton, or the said plaintiff since the decease of said Walton, did not any time from the time the said cause of action accrued until within eight years of the day of the commencement of this suit, come into or come within the Territory or State of Michigan; and this the said plaintiff, as survivor of himself and William B. Walton, deceased, is ready to verify; wherefore he prays judgment and his debt aforesaid, together with his reasonable damages by him sustained on occasion of the detention thereof, to be adjudged to him, &c.

And the said plaintiff, as survivor of himself and William B. Walton, deceased, as to the plea of the said defendant by him fourthly above pleaded, further saith, that he ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that at the time when the said cause of action in the said second count of the said plaintiff's declaration did accrue to the said plaintiff and the said William B. Walton, in the lifetime of said Walton, since deceased; they, the said plaintiff and the said William B. Walton in the lifetime of the said William B. Walton, since deceased, and the said plaintiff since the death of the said William B. Walton, were in parts beyond the jurisdiction and out of the then Territory, now State of Michigan, to wit, in the city, county, and

State of New York, and that the said plaintiff and the said William B. Walton, or either of them, in the lifetime of said Walton, or the said plaintiff since the decease of said Walton, did not at any time from the time said cause of action accrued until within six years of the day of the commencement of this suit, come into or come within the Territory or State of Michigan; and this the said plaintiff is ready to verify; wherefore he prays judgment and his debt aforesaid, together with his damages by him sustained on occasion of the detention thereof, to be adjudged to him, &c.

By O. HAWKINS,
Att'y for plaintiff.

Demurrer to amended Replication.

And the said defendant, as to the amended replication of the said plaintiff to the third plea of the defendant above pleaded, say, that the said replication of the said plaintiff, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant; and that he, the said defendant, is not bound by law to answer the same, and this the said defendant is ready to verify; wherefore, by reason of the insufficiency of the said replication in this behalf, the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And the said defendant, according to the rules and practice of this court, states and shows to the court here the following causes of demurrer in law to the said amended replication, that is to say:

1st. The said plaintiff and said William B. Walton, deceased, being in parts beyond the jurisdiction of the then Territory, now State of Michigan, in the city, county, and State of New York, at the time the said cause of action accrued, did not take it out of the operation of the statute of limitations.

2d. The amended replication is not in law a sufficient answer to said plea, inasmuch as it does not allege that said plaintiff or said Walton, from the time said pretended cause of action accrued, and until within eight years before the commencement of this suit, were without the United States, nor any other facts that would bring it within any of the exceptions to the statute of limitations in such case made and provided, or that in law constitute a sufficient answer to the said plea of the said defendant.

3d. The said replication is in other respects uncertain, informal, and insufficient.

And the said defendant, as to the amended replication of the said plaintiff to the fourth plea of the defendant above pleaded, says, that the said replication of the said plaintiff, and the matters therein contained in manner and form as the said are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that he, the

said defendant, is not bound by law to answer the same; and this the said defendant is ready to verify; wherefore, by reason of the insufficiency of the said replication in this behalf, the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And the said defendant, according to the rules and practice of this court, states, and shows to the court here the following causes of demurrer in law to the said amended replication, that is to say:

1st. The said plaintiff and William B. Walton, deceased, being in parts beyond the jurisdiction of the then Territory, now State of Michigan, in the city, county and State of New York, at the time the said alleged cause of action accrued, did not take it out of the operation of the statute of limitations.

2d. The amended replication is not in law a sufficient answer to said plea, inasmuch as it does not allege that said plaintiff or said Walton, from the time said pretended cause of action accrued, and until within six years before the commencement of this suit, were without the United States, nor any other facts that would bring it within any of the exceptions to the statute of limitations in such cases made and provided, or that in law constitute a sufficient answer to the said plea of the said defendant.

3d. The said replication is in other respects uncertain, informal, and insufficient.

WILLCOX, SHELDON & GRAY,
Att'ys for def't.

Joinder in demurrer to Plaintiff's Replication.

And the said plaintiff, as survivor of himself and so forth, saith, that the replications of the said plaintiff to the pleas of the said defendant by him thirdly and fourthly above pleaded, and the matters therein contained in manner and form as the same are above pleaded and set forth, are sufficient in law for him, the said plaintiff, to maintain his aforesaid action thereof against the said defendant, which said replications and the matters therein contained the said plaintiff, as survivor, &c., is ready to verify and prove as this honorable court shall direct and award. Wherefore, inasmuch as the said defendant hath not answered the said replications, nor hitherto in any manner denied the same, the said plaintiff as survivor, &c., prays judgment, and that his replications to said pleas may be adjudged good, and that the defendant may further answer thereto.

O. HAWKINS,
Att'y for pl'ff.

Judgment on demurrer.

And now at this day, to wit, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-two, come the parties aforesaid by their respective attorneys, and all and singular the

premises aforesaid being seen by the court now here, and fully understood, and mature deliberation being thereupon had, it seemeth to the said court now here, that the said demurrer of the said defendant to said plaintiff's amended replication to said defendant's third plea, and the matters in said third plea, amended replication and demurrer contained, are not sufficient in law to bar or preclude the said plaintiff from having or maintaining his action aforesaid thereof against the said defendant.

On the same day last mentioned, the said plaintiff moved the court that the fifth plea of the said defendant be stricken out; which motion, on solemn argument, was overruled and denied by the said court.

Noll. pros. as to 2d count of Narr.

And the said plaintiff, by his attorney aforesaid, in open court, and by leave thereof, says, that he will not further prosecute his suit against the said defendant in respect to the second count of his said declaration on file in this cause.

On the eighteenth day of October, in the year one thousand eight hundred and forty-two, the said defendant, by his said attorney, comes and moves the said court for leave to file rejoinder to said plaintiff's amended replication to said defendant's third plea; which motion on the same day was by the said court overruled and denied, and the case was continued until the June term of said court, to be held in the year one thousand eight hundred and fifty-three.

And now, to wit, on the twenty-eighth day of June, of the term of June, in the year of our Lord one thousand eight hundred and fifty-three, came the said parties by the attorneys aforesaid; whereupon the record aforesaid being inspected by the court now here, it sufficiently appears to said court that there is such a record of a recovery against the said defendant, William C. Pease, at the suit of the John Peck and William B. Walton, as they have in their declaration alleged.

Therefore, it is considered that the said plaintiff, John Peck, survivor of himself and William B. Walton, deceased, do recover against the said defendant, William C. Pease, the sum of two thousand two hundred and nine dollars and fifteen cents, as well for his debt as for his damages sustained by him for the detention of his debt, together with his costs and charges by him about his suit in this behalf laid out and expended, by the court now here adjudged to the said John Peck, survivor of himself and William B. Walton, deceased, and with his assent.

And the said William C. Pease, in mercy, &c.

Judgment signed June 28, A. D. 1853.

(Signed) JNO. WINDER, *Clerk*.

Circuit Court of the United States, for the district of Michigan.

JOHN PECK, survivor of himself and WILLIAM B. WALTON, deceased, plaintiff,
vs.
WILLIAM C. PEASE, defendant.

DISTRICT OF MICHIGAN, *ss:*

I, John Winder, clerk of said court, do hereby certify the above and foregoing to be a true copy of the original record of judgment made and entered in said court in the above entitled cause, the same having compared by me with said original judgment, and is the whole thereof.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Detroit, in said district, this 29th day of August, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the seventy-ninth.

[L. S.]

JNO. WINDER, *Clerk.*

UNITED STATES SUPREME COURT.

WILLIAM C. PEASE
vs.
JOHN PECK, survivor of himself and WILLIAM B. WALTON, deceased.

CITY AND COUNTY OF NEW YORK, *ss:*

Edmund H. Rae, being duly sworn, says, that on the third day of September, 1855, at the city of New York, he served the annexed citation on John Peck, the defendant in the above entitled suit, by delivering a copy thereof to him personally, and leaving the same with him, and at the same time showing him the original thereof. He further says, that he knew the person served as aforesaid to be the person mentioned and described in the said citation as such defendant therein.

EDMD. H. RAE.

Sworn to before me, this 4th day of September, 1855.

R. E. STILLWELL, *U. S. Comm'r.*

Citation.

UNITED STATES OF AMERICA, *ss:*

To John Peck, survivor of himself and William B. Walton, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the

clerk's office of the circuit court of the United States for the seventh circuit and district of Michigan, wherein William C. Pease is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Ross Wilkins, one of the judges of said circuit court of the United States, this 29th day of August, A. D. 1855.

ROSS WILKINS, *Judge*.

THE SUPREME COURT OF THE UNITED STATES.

WILLIAM C. PEASE
vs.
JOHN PECK, survivor of himself and WILLIAM B. WALTON, deceased, deft. in error.

Assignment in error.

Afterwards, to wit, on the fifth day of October, A. D. 1855, before the justice of the said Supreme Court of the United States at Washington, comes the said William C. Pease, plaintiff in error, by Emmons & Gray, his attorneys, and says: That in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

1st. The said replication of the defendants in error to the said third and fourth pleas of the plaintiff in error, and the matters therein contained, are not sufficient in law for the said defendants in error to have and maintain their aforesaid action; wherefore the court below erred in deciding that the said replications and the matters therein contained were sufficient answer to the said pleas.

2d. The said replications contain no statement or allegation taking the claim of the plaintiff below out of the operation of the statute of limitations, or bringing the same within any of the exceptions to said statute; and there is error in the decision of the court below, that the facts stated in said replication were sufficient to take the case out of the operation of the said statute.

3d. There is error in the judgment and decision of the court below, overruling the said demurrer of the defendant below to the replication of the plaintiff below.

4th. That, as appears by the said pleadings and record, the claim of plaintiff below was barred by the statute of limitations, wherefore there was error in the judgment of the court below in overruling said demurrer, and in rendering judgment for the plaintiff below.

5th. As appears by the said record, judgment was given in favor of the plaintiff below, whereas, upon the pleadings and by the law, it should have rendered in favor of the defendant below.

And the said William C. Pease prays that the judgment aforesaid,